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7 Attorneys for Defendant, MTC FINANCIAL INC. dba TRUSTEE CORPS

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 OLIVIA C. NEWMAN; MICHAEL K.
12 NEWMAN

13 Plaintiffs,

14 vs.
15 ONEWEST BANK, FSB; INDYMAC
16 FEDERAL BANK, FSB; MTC FINANCIAL
17 INC., dba TRUSTEE CORPS; FRANKLIN
18 BANK, SSB; INDYMAC MORTGAGE
19 SERVICES, FDIC as Receiver of INDYMAC
20 Federal Bank - #10007; DEUTSCHE BANK
21 NATIONAL TRUST COMPANY, as Trustee
22 on behalf of the Certificate holders of the
Residential Asset Securitization Trust 2006-
A16, Mortgage Pass-Through Certificates
Series 2006-P, as assignee of MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS
INC. ("MERS"), acting as nominee for
IndyMac Bank FSB, and; and DOES 1 through
1000 inclusive

23 Defendants.

CASE NO. 5:10cv-00064AHM-DTB

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DECLARATION OF ELIZABETH
DOLAN SCOTT IN RESPONSE
TO ORDER TO SHOW CAUSE

I, ELIZABETH DOLAN SCOTT, declare:

1. I am an attorney duly licensed to practice law before all the Courts of the State
of California, and am an attorney with the law firm of Turner, Reynolds, Greco & O'Hara,
attorneys of record for Defendant MTC Financial Inc., dba Trustee Corps in the above-
described action. The following facts are personally known to me and I have first-hand

1 knowledge of the same, or are matters of which the court may take judicial notice. If called
2 as a witness, I could and would competently testify thereto under oath.

3 2. In order to determine whether Franklin Bank was served, I obtained the proof
4 of service that Plaintiffs filed in the state court case. A copy of that Proof of Service is
5 attached to this Declaration as Exhibit "A." The Proof of Service indicates that Franklin
6 Bank was served at a location of 9800 Richmond Avenue, #680, and that William
7 Weaverly, Assistant Bank Manager, was served. I visited the Texas Secretary of State's
8 website and confirmed that this was the address of the agent for service of process for this
9 bank. I called this bank location and requested to speak to the registered agent for service
10 of process Debra Ruby, and was told that she was no longer with the bank. I then asked if
11 there was a William Weaverly at that location and was told there was never such a person.
12 I was also told that the bank had been taken over by the FDIC, and I was given the number
13 for Counsel for the FDIC, Herbert Kenney. I spoke with Mr. Kinney on January 27, 2010
14 and was told William Weaverly was not employed by the bank at that location, and that
15 there would not be an Assistant Bank Manager at that location as this was not a branch but
16 the bank's headquarters. Mr. Kinney also told me that the FDIC is the receiver for this
17 bank, and that an agent for service of process for the FDIC must be served, and not the
18 bank. In addition, Mr. Kinney also indicated that the FDIC would prefer to be in federal
19 court and therefore the FDIC would likely consent to removal of this action once it has had
20 a chance to review the Complaint. A copy of an email confirming this conversation is
21 attached to this declaration as Exhibit "B." A copy of the press release I obtained from the
22 FDIC's website stating that Franklin Bank is under receivership is attached to this
23 declaration as Exhibit "C."

24 3. I also obtained a copy of the proof of service in the state case for IndyMac. A
25 copy of that Proof of Service is attached to this Declaration as Exhibit "D." This proof of
26 service states that IndyMac was served at its office address in Pasadena. The Secretary of
27 State indicates that the registered agent for service of process for IndyMac is in
28 Sacramento. In any case, there is no proof of service reflecting service on the FDIC. A

1 copy of the press release I obtained from the FDIC's website stating that IndyMac Bank is
2 under conservatorship is attached to this declaration as Exhibit "D." A copy of the press
3 release I obtained from the FDIC's website stating that the assets of IndyMac Federal
4 Bank, F.S.B. have since been sold to Onewest Bank, F.S.B. attached to this declaration as
5 Exhibit "E."

6 I declare under the laws of the United States of America that the foregoing is true
7 and correct.

8 Executed on February 2, 2010 at Irvine, California.

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11 ELIZABETH DOLAN SCOTT, Declarant
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Elizabeth Scott

From: Kenney, Herbert [HKenney@FDIC.gov]
Sent: Thursday, January 28, 2010 8:04 AM
To: Elizabeth Scott
Subject: RE: Newman v Onewest Bank

Counselor -

I have confirmed that there is no such person here. 9800 Richmond is not a branch, it is the HQ for the former bank. The former bank is not Franklin Bank, FSB, it is Franklin Bank, S S B. Last, but definitely not least, the Bank was closed in November of 2008 and the FDIC is receiver. The time for filing claims has long passed.

FDIC has appointed agents for service of process, see <http://www.fdic.gov/about/contact/agents/> and that is the only way FDIC can be served.

99.9% of the time we would rather be in federal court so the removal is most likely something we would consent to. Depending on the case, we also might be able to waive service.

As I explained on the phone, litigation for this receivership is handled by the Dallas Regional Office. If you could please send me a scan of the complaint, I will send it to Dallas and ask them to give you a call.

Herbert Kenney, Counsel
Federal Deposit Insurance Corporation
On-Site, 10021, Franklin Bank, Houston, TX
Cell 214-250-2279

From: Elizabeth Scott [mailto:escott@trlawyers.com]
Sent: Wednesday, January 27, 2010 5:44 PM
To: Kenney, Herbert
Subject: Newman v. Onewest Bank

Mr. Kenney -

As we discussed on the telephone earlier today, I am trying to determine whether Franklin Bank has been served in the Newman v. Onewest Bank case (Superior Court of California, County of Riverside Case No. RIC542756). I represent another Defendant MTC Financial. I have removed the case to Federal Court, and the Federal District Court is requiring me to obtain Franklin Bank's consent to the removal, if Franklin Bank has been served.

I have attached the proof of personal service plaintiff filed in this matter, which indicates that a William Weaverly (Assistant Bank Manager) was served on behalf of Franklin Bank at the 9800 Richmond Avenue Address. However, I also have been told that there is no such employee located at this branch.

I appreciate your help.

Thank you again,
Elizabeth

Elizabeth Dolan Scott

EXHIBIT A
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Press Releases

Prosperity Bank Acquires All the Deposits of Franklin Bank, S.S.B., Houston, Texas

FOR IMMEDIATE RELEASE
November 7, 2008

Media Contact:
David Barr (202) 898-6992
Cell: 703-622-4790
e-mail: dbarr@fdic.gov

En Español

Franklin Bank, S S B , Houston, Texas, was closed today by the Texas Department of Savings and Mortgage Lending, and the Federal Deposit Insurance Corporation (FDIC) was named receiver. To protect the depositors, the FDIC entered into a purchase and assumption agreement with Prosperity Bank, El Campo, Texas, to assume all of the deposits, including those that exceeded the insurance limit, of Franklin Bank.

Franklin Bank's 46 offices will reopen as branches of Prosperity Bank under their normal hours, including those with Saturday hours. Depositors of the failed bank automatically become depositors of Prosperity Bank. Customers of both banks should continue to use their existing branches until Prosperity Bank can fully integrate the deposit records of Franklin Bank. Deposits will continue to be insured by the FDIC, so there is no need for customers to change their banking relationship to retain their deposit insurance coverage.

As of September 30, 2008, Franklin Bank had total assets of \$5.1 billion and total deposits of \$3.7 billion. Prosperity Bank agreed to assume all the deposits, including the brokered deposits, for a premium of 1.7 percent. In addition to assuming all of the failed bank's deposits, Prosperity Bank will purchase approximately \$850 million of assets. The FDIC will retain the remaining assets for later disposition.

Customers who have questions about today's transaction can call the FDIC toll free at 1-800-591-2845. This phone number will be operational this evening until 9 p.m. central; on Saturday from 9 a.m. to 6 p.m. central; and on Sunday noon until 6 p.m. central and thereafter from 8 a.m. to 8 p.m. central. Interested parties can also visit the FDIC's Web site at <http://www.fdic.gov/bank/individual/failed/franklinbank.html>

It is important to note that neither the FDIC as receiver nor Prosperity Bank as the acquiring institution will e-mail customers of Franklin Bank asking them to validate their deposits or to request personal, confidential information, such as account numbers, Social Security Number, driver's license number, etc. If customers receive e-mails asking for such personal information, they should consider them to be fraudulent in nature and should not respond.

The FDIC estimates that the cost of today's transaction to its Deposit Insurance Fund will be between \$1.4 billion and \$1.6 billion. Prosperity Bank's acquisition of all deposits was the "least costly" resolution for the FDIC's Deposit Insurance Fund compared to alternatives. Franklin Bank is the eighteenth bank to fail in the nation this year, and the first in Texas since Bank of Sierra Blanca, Sierra Blanca, Texas, on January 18, 2002.

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Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 8,451 banks and savings

EXHIBIT B
5

associations and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars – insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet at www.fdic.gov, by subscription electronically (go to www.fdic.gov/about/subscriptions/index.html) and may also be obtained through the FDIC's Public Information Center (877-275-3342 or 703-562-2200). PR-113-2008

Last Updated 11/7/2008

communications@fdic.gov

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POS-020 D7

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
 Law Office of Lizette V. Espinoza
 714 W. Olympic Blvd. Ste. 911
 Los Angeles, CA 90015

FOR COURT USE ONLY

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

JAN 15 2010


TELEPHONE NO. 213-747-6007
 E-MAIL ADDRESS (Optional): lizetter@lespinosalaw.com FAX NO. (Optional): 213-747-6097
 ATTORNEY FOR (Name): Plaintiffs Olivia and Michael Newman

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside

STREET ADDRESS: 4050 Main Street
 MAILING ADDRESS: 4050 Main Street
 CITY AND ZIP CODE: Riverside, CA 92501
 BRANCH NAME: Civil Courthouse

PETITIONER/PLAINTIFF: OLIVIA C. NEWMAN AND MICHEAL K. NEWMAN

RESPONDENT/DEFENDANT: ONEWEST BANK, FSB ET AL.,

CASE NUMBER: *AC 542756*
56PHC 5427

PROOF OF PERSONAL SERVICE—CIVIL*(Do not use this Proof of Service to show service of a Summons and Complaint.)*

1. I am over 18 years of age and not a party to this action
2. I served the following documents (specify): Ex Parte Application and Supporting Declaration of Lizette Espinosa for temporary Restraining Order and Order to Show cause Re Preliminary Injunction; Memorandum of Points and Authorities; Verified Summons and Complaint, Notice of Related Cases, Civil Case Cover Sheet, Certificate of Counsel ,Notice of Errata; Temporary Restraining Order and Order to Show Cause RE consolidation of Cases, Temporary Stay of Unlawful Detainer action TEU007439

The documents are listed in the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)).
3. I personally served the following persons at the address, date, and time stated:
 - a. Name: Juliet Karapetyan--Agent of Service for One West Bank FSB
 - b. Address: 888 East Walnut Street, Pasadena, CA 91101
 - c. Date: December 29, 2009
 - d. Time: 9:44 a.m.

The persons are listed in the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P))
4. I am
 - a. not a registered California process server
 - b. a registered California process server
 - c. an employee or independent contractor of a registered California process server
 - d. exempt from registration under Business & Professions Code section 22350(b)
5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):
 Alex Miller
 4361 Mission Blvd.
 Montclair, CA 91763
6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct
7. I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: 01-15-2010

Alex Miller

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

Form Approved for Optional Use
 Judicial Council of California
 POS-020 (New January 1 2005)

PROOF OF PERSONAL SERVICE—CIVIL

Code of Civil Procedure, § 1011
www.courtinfo.ca.gov

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www.accesslaw.com

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Press Releases

FDIC Establishes IndyMac Federal Bank, FSB as Successor to IndyMac Bank, F.S.B., Pasadena, California

FOR IMMEDIATE RELEASE
July 11, 2008

Media Contact:
In Washington: Andrew Gray (202) 898-7192,
Cell: 202-494-1049
angray@fdic.gov
In California: David Barr
Cell: 703-622-4790
dbarr@fdic.gov

En Español

IndyMac Bank, F.S.B., Pasadena, CA, was closed today by the Office of Thrift Supervision. The Federal Deposit Insurance Corporation (FDIC) was named conservator. The FDIC will transfer insured deposits and substantially all the assets of IndyMac Bank, F.S.B., Pasadena, CA, to IndyMac Federal Bank, FSB. Brokered deposits will be held by the FDIC and those insured deposits will be paid off when the insurance determination is complete. IndyMac Bank, FSB had total assets of \$32.01 billion and total deposits of \$19.06 billion as of March 31, 2008. As conservator, the FDIC will operate IndyMac Federal Bank, FSB to maximize the value of the institution for a future sale and to maintain banking services in the communities formerly served by IndyMac Bank, F.S.B.

Insured depositors and borrowers will automatically become customers of IndyMac Federal, FSB and will continue to have uninterrupted customer service and access to their funds by ATM, debit cards and writing checks in the same manner as before. Depositors of IndyMac Federal Bank, FSB will have no access to on-line and phone banking services this weekend. These services will be operational again on Monday. Loan customers should continue making loan payments as usual.

Beginning on Monday, July 14, IndyMac Federal Bank, FSB's 33 branches will observe normal operating hours and will continue to offer full banking services, including on-line banking. For additional information, the FDIC has established a toll-free number for customers of IndyMac Federal Bank, FSB. The toll-free number is 1-866-806-5919 and will operate today from 3:00 p.m. to 9:00 p.m. (PDT), and then daily from 8:00 a.m. to 8:00 p.m. thereafter, except Sunday, July 13, when the hours will be 8:00 a.m. to 6:00 p.m. Customers also may visit the FDIC's Web site at <http://www.fdic.gov/bank/individual/failed/IndyMac.html> for further information.

At the time of closing, IndyMac Bank, F.S.B. had about \$1 billion of potentially uninsured deposits held by approximately 10,000 depositors. The FDIC will begin contacting customers with uninsured deposits to arrange an appointment with an FDIC claims agent on Monday. Customers can contact the FDIC for an appointment using the toll-free number above. The FDIC will pay uninsured depositors an advance dividend equal to 50 percent of the uninsured amount.

Based on preliminary analysis, the estimated cost of the resolution to the Deposit Insurance Fund is between \$4 and \$8 billion. IndyMac Bank, F.S.B. is the fifth FDIC-insured failure of the year. The last FDIC-insured failure in California was the Southern Pacific Bank, Torrance, on February 7, 2003.

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Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 8,494 banks and savings associations and it promotes the safety and soundness of these institutions by identifying, monitoring

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and addressing risks to which they are exposed

FDIC press releases and other information are available on the Internet via the World Wide Web at www.fdic.gov and may also be obtained through the FDIC's Public Information Center 1-877-275-3342 or (703) 562-2200. **PR-56-2008**

Last Updated 7/14/2008

communications@fdic.gov

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FDIC Office of Inspector General

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Press Releases

FDIC Closes Sale of Indymac Federal Bank, Pasadena, California

FOR IMMEDIATE RELEASE
March 19, 2009

Media Contact:
David Barr
Office: (202) 898-6992
Cell: (703) 622-4790
Email: dbarr@fdic.gov

The Federal Deposit Insurance Corporation (FDIC) has completed the sale of IndyMac Federal Bank FSB, Pasadena, California, to OneWest Bank, FSB, a newly formed Pasadena, California-based federal savings bank organized by IMB HoldCo LLC. OneWest will assume all deposits of IndyMac Federal. IMB HoldCo signed a letter of intent with the FDIC on December 31, 2008, to purchase IndyMac Federal.

The 33 branches of IndyMac Federal will reopen as branches of OneWest tomorrow. Depositors of IndyMac Federal will automatically become depositors of OneWest. Deposits will continue to be insured by the FDIC, so there is no need for customers to change their banking relationship to retain their deposit insurance coverage. Checks drawn on the bank will continue to be processed. Loan customers should continue to make their payments as usual.

As of January 31, 2009, IndyMac Federal had total assets of \$23.5 billion and total deposits of \$6.4 billion. OneWest has agreed to purchase all deposits and approximately \$20.7 billion in assets at a discount of \$4.7 billion. The FDIC will retain the remaining assets for later disposition.

FDIC and OneWest have entered into a loss share transaction on the single family residential portfolio. Under terms of the loss share agreement, OneWest will continue the FDIC's existing loan modification program.

Customers who have questions about the transaction can call the FDIC toll-free at 866-806-5919. The phone number will be operational this evening until 9:00 p.m. Pacific Time; on Saturday from 9:00 a.m. to 6:00 p.m. Pacific Time; on Sunday from noon until 6:00 p.m. Pacific Time; and thereafter from 9:00 a.m. to 5:00 p.m. Pacific Time. Interested parties can also visit the FDIC's website at <http://www.fdic.gov/bank/individual/failed/IndyMac.html>

IndyMac Federal sustained losses of \$2.6 billion in the fourth quarter 2008 due to deterioration in the real estate market. The total estimated loss to the Deposit Insurance Fund is \$10.7 billion. No further payments on receivership claims for uninsured funds from former IndyMac Bank, F.S.B. will be distributed as a result of this transaction.

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Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 8,305 banks and savings associations and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars – insured financial institutions fund its operations.

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